

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

REUVEN SHABI,

Plaintiff,

v.

MLOGICA, INC., et al.

Defendants.

Case No. 2:22-cv-00049 (BRM) (JBC)

**ORDER**

**THIS MATTER** is opened to the Court on the Report and Recommendation of the Honorable James B. Clark, III, U.S.M.J., dated May 3, 2022 (ECF No. 9), wherein he recommends that this action remain in federal court and further discovery be conducted to determine the viability of Plaintiff's claims against Defendant John Avagliano ("Avagliano"), CFO of defendant mLogica, Inc. ("mLogica").

Prior to making the Report and Recommendation, Judge Clark issued an order for Defendants to show cause why the action should not be remanded to state court pursuant to 28 U.S.C. § 1447(c) for lack of subject matter jurisdiction. Specifically, Judge Clark ordered Defendants to demonstrate the existence of diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) in light of the claims against Avagliano. (ECF No. 5.) Defendants argued Plaintiff fraudulently joined Avagliano "for the purposes of harassment and in an attempt to establish state court forum," and that Plaintiff's claims against Avagliano do not constitute a cognizable cause of action because, among other reasons, Avagliano was not an employee of mLogica at the time Plaintiff was employed. (ECF No. 6.) Plaintiff argued Avagliano was not fraudulently joined and

the Court lacks diversity jurisdiction because “both plaintiff and defendant Avagliano are citizens of New Jersey.” (ECF No. 7.)

Judge Clark reports that further discovery is needed to determine the extent of Avagliano’s role at mLogica during the time of the alleged wrongful actions set forth in Plaintiff’s Complaint and recommends the matter remain in federal court for “further discovery [to] be conducted to determine the viability of Plaintiff’s claims against [] Avagliano.” (ECF No. 9.)

The parties were given the opportunity to respond or object to Judge Clark’s Report and Recommendation within fourteen days after service hereof, pursuant to Local Civil Rule 72.1(c)(2); to date, no party has responded or objected to the Report and Recommendation. Having reviewed the Report and Recommendation, and it appearing the Court should adopt the Report and Recommendation without modification,

**IT IS** on this 15th day of June 2022,

**ORDERED** that the Report and Recommendation (ECF No. 9) is hereby adopted in its entirety and entered; and it is further

**ORDERED** that the matter **REMAIN** in federal court pending further fact discovery regarding Avagliano’s role at mLogica.

/s/ *Brian R. Martinotti*  
**HON. BRIAN R. MARTINOTTI**  
**UNITED STATES DISTRICT JUDGE**